

#### §4.215

(a) In all cases, lists the names, identifying numbers as assigned by BIA, birth dates, relationships to the decedent, and shares of the heirs, or finds that the decedent died leaving no legal heirs, and provides citations to the law of descent and distribution in accordance with which the decision is made;

(b) In testate cases, approves or disapproves a will, interprets provisions of the approved will, provides the names, identifying numbers as assigned by BIA, and relationships of the beneficiaries to the decedent, and describes the property each beneficiary is to receive;

(c) Allows or disallows claims against the estate in accordance with §§4.250-4.251, and orders the amount of payment for all approved claims;

(d) States whether the heirs or beneficiaries are Indian or non-Indian;

(e) Determines any rights of dower, curtesy, or homestead that may constitute a burden upon the interest of the heirs;

(f) Attaches a certified copy of the inventory of trust or restricted lands, if any; and

(g) Advises all interested parties of their right to seek de novo review in accordance with §4.215, and that, if they fail to do so, the decision of the attorney decision maker will become final upon expiration of the 60-day period provided in §4.215(c).

#### §4.215 De novo review following decision of attorney decision maker.

(a) Any interested party who is adversely affected by a written decision of an attorney decision maker under §4.214 may seek de novo review of the case by an administrative law judge or Indian probate judge by filing a request with the attorney decision maker.

(b) The request for de novo review must be in writing and signed, and must contain the following information:

- (1) The name of the decedent;
- (2) A description of the appellant's relationship to the decedent;
- (3) An explanation of how the appellant is adversely affected by the decision of the attorney decision maker; and

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(4) An explanation of what errors the appellant believes the attorney decision maker made.

(c) The request for de novo review by an administrative law judge or Indian probate judge must be sent or delivered to the attorney decision maker within 60 days after the date that appears on the decision. If the request is mailed, it must be postmarked within 60 days after the date of the decision.

(d) After the 60-day period has expired, an interested party who is adversely affected by a written decision of an attorney decision maker under §4.214 may file with the attorney decision maker a request for de novo review by an administrative law judge or Indian probate judge for one or more of the following reasons:

(1) The party did not receive notice of the probate;

(2) The party obtained new evidence or information after the decision was made; or

(3) The party has evidence that was known at the time of the probate proceeding but was not included in the probate package.

(e) Within 10 days of receiving the request for de novo review, the attorney decision maker will notify the Superintendent and all other interested parties of the request, and OHA will assign the case to an administrative law judge or Indian probate judge.

(f) The administrative law judge or Indian probate judge will review the merits of the case de novo, conduct a formal hearing as necessary or appropriate pursuant to the regulations in this subpart, and issue a new decision in accordance with §4.240.

#### FORMAL PROBATE PROCEEDINGS

SOURCE: 70 FR 11816, Mar. 9, 2005, unless otherwise noted.

### Notice

#### §4.216 Notice.

(a) Before conducting a formal hearing to determine the heirs of a deceased Indian or probate his or her will, the administrative law judge or Indian probate judge must cause notice of the time and place of the hearing to be posted.

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(1) The notice must be posted at least 20 days before the hearing date in five or more conspicuous places in the vicinity of the designated place of hearing.

(2) The administrative law judge or Indian probate judge may cause postings in such other places and reservations as he or she deems appropriate.

(3) A certificate showing the date and place of posting must be signed by the person or official who performs the act.

(b) The administrative law judge or Indian probate judge must serve or cause to be served a copy of the notice on each interested party known to the administrative law judge or Indian probate judge and on each attesting witness if a will is offered:

(1) By personal service in sufficient time in advance of the date of the hearing to enable the person served to attend the hearing; or

(2) By mail, addressed to the person at his or her last known address, in sufficient time in advance of the date of the hearing to enable the addressee served to attend the hearing. The administrative law judge or Indian probate judge must cause a certificate, as to the date and manner of the mailing, to be made on the record copy of the notice.

(c) All interested parties, known and unknown, including creditors, will be bound by the decision based on the hearing if they lived near any place of posting during the posting period, whether or not they had actual notice of the hearing. With respect to interested parties not living near the place of posting, a rebuttable presumption of actual notice will arise upon the mailing of the notice at a reasonable time before the hearing, unless the notice is returned by the postal service to the office of the administrative law judge or Indian probate judge unclaimed by the addressee.

(d) When a record reveals that a tribe has a statutory option to purchase interests of a decedent:

(1) The administrative law judge or Indian probate judge must notify the tribe of the pendency of a proceeding; and

(2) The certificate of mailing of notice of probate hearing or of a final decision in probate to the tribe at its

record address will be conclusive evidence that the tribe had notice of the decedent's death and of the probate proceedings.

### § 4.217 Contents of notice.

(a) In the notice of a formal hearing, the administrative law judge or Indian probate judge must:

(1) Specify that, at the stated time and place, the administrative law judge or Indian probate judge will take testimony to determine the heirs of the decedent (naming him or her) and, if a will is offered for probate, testimony as to the validity of the will (describing it by date);

(2) Name all known probable heirs of the decedent, and, if a will is offered for probate, the beneficiaries under the will and the attesting witnesses to the will;

(3) Cite this subpart as the authority and jurisdiction for holding the hearing;

(4) Inform all persons having an interest in the estate of the decedent, including persons having claims against the estate, to be present at the hearing or their rights may be lost by default; and

(5) State that the hearing may be continued to another time and place.

(b) A continuance may be announced either at the original hearing by the administrative law judge or Indian probate judge or by an appropriate notice posted at the announced place of hearing on or before the announced hearing date and hour.

### DEPOSITIONS, DISCOVERY, AND PREHEARING CONFERENCE

SOURCE: 70 FR 11817, Mar. 9, 2005, unless otherwise noted.

### § 4.220 Production of documents for inspection and copying.

(a) An interested party may make a written demand to produce documents for inspection and copying or photographing. This demand:

(1) May be made at any stage of the proceeding before the conclusion of the formal hearing;